



# WISCONSIN REGULATORY DIGEST

Volume 13, No. 2      A Publication of the      VETERINARY EXAMINING BOARD      NOVEMBER, 2000

## 1999 WI Act 176 Whistleblowers Against Retaliation

The state will protect health care industry whistleblowers from retaliation by their employers under legislation Gov. Tommy Thompson signed into law on May 17, 2000.

1999 WI Act 176 also allows health care workers who believe they were disciplined for reporting possible violations to file discrimination complaints with the state.

Thompson said although Wisconsin is already at the forefront of health care, the law will further improve patient care by giving workers the protection they need to speak out when they see problems.

“This bill strengthens the laws already in place to protect health care users, and it does so with minimal cost,” Thompson said.

Employers found to have unfairly disciplined doctors, nurses, pharmacists, social workers and other health care workers face up to \$10,000 in civil fines under the new law.

It also gives health care workers the same right to file discrimination complaints as state employees who feel their supervisors have retaliated against them.

Under the new law, retaliation includes being fired or switched to a different shift, reprimanded or threatened.

Gina Dennik-Champion, a spokeswoman for the Wisconsin Nurses Association, said the law also requires health care providers to post information on whistleblower protections and include it in their orientation for new workers.

“A lot of times, they use the chain of command and they keep telling them ‘We’ll fix it, we’ll fix it’ and it doesn’t get fixed,” Dennik-Champion said. “It just kind of goes nowhere. The concern still exists.”

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### Contents

Governor Signs Whistleblower Law .....	1
Board Member Roster.....	1
1999 WI Act 176 .....	2
Reporting Complaints.....	4
Role of the Public Member.....	5
Disciplines .....	6
Telephone Directory & Miscellaneous .....	7

Scott Peterson, spokesman for the Wisconsin Health and Hospital Association, said the health care industry sees the law as another step to improve patient care.

“We’re not going to achieve the high levels of quality that the public is demanding without the help of our employees,” Peterson said.

#### **1999 WISCONSIN ACT 176**

AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.06 (6), 146.997 and 230.45 (1) (L) of the statutes; **relating to:** disciplinary action against an employe of a health care facility or a health care provider who reports a violation of the law or a violation of a clinical or ethical standard by the health care facility or health care provider or by an employe of the health care facility or health care provider and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 106.06 (6) of the statutes is created to read:

**106.06 (6)** The division shall receive complaints under s. 146.997 (4) (a) of disciplinary action taken in violation of s. 146.997 (3) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

**SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

**111.322 (2m)** (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

**SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read: 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

**SECTION 4.** 146.997 of the statutes is created to read:

**146.997 Health care worker protection. (1)** DEFINITIONS. In this section:

(a) “Department” means the department of workforce development.

(b) “Disciplinary action” has the meaning given in s. 230.80 (2).

(c) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health complex, tuberculosis sanatorium or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08, 51.09, 58.06, 252.073 or 252.076 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) “Health care provider” means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, podiatrist or physical therapist licensed under ch. 448.
5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.
6. A dietician certified under subch. V of ch. 448.
7. An optometrist licensed under ch. 449.
8. A pharmacist licensed under ch. 450.
9. An acupuncturist certified under ch. 451.
10. A psychologist licensed under ch. 455.
11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.
12. A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
13. A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.
14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.
15. A partnership of any providers specified under subds. 1. to 14.
16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.
17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
18. A hospice licensed under subch. IV of ch. 50
19. A rural medical center, as defined in s. 50.50 (11).

20. A home health agency, as defined in s. 50.49 (1)(a).

**(2) REPORTING PROTECTED.** (a) Any employe of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard-setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employe of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employe of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employe of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard-setting body that receives a report under par. (a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard-setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employe of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employe of a health care facility or health care provider may provide any information

relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

**(3) DISCIPLINARY ACTION PROHIBITED.** (a) No health care facility or health care provider and no employe of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employe believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2)(d).

(b) No health care facility or health care provider and no employe of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2)(c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employe believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employe is not acting in good faith if the employe reports any information under sub. (2) (a) that the employe knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2)(c) based on information that the employe knows or should know is false or misleading or provides any information under sub. (2) (d) that the employe knows or should know is false or misleading.

**(4) ENFORCEMENT.** (a) Subject to par. (b), any employe of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.06 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action

under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32(6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the personnel commission under s. 230.45(1) (L). If the personnel commission finds that a violation of sub. (3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a) or (b).

**(5) CIVIL PENALTY.** Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period shall be measured by using the dates of the violations that resulted in convictions.

**(6) POSTING OF NOTICE.** Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than \$100 for each offense.

**SECTION 5.** 230.45 (1) (L) of the statutes is created to read: 230.45 (1) (L) Receive complaints under s. 146.997(4) (a) of disciplinary action taken in violation of s. 146.997 (3) and, except as provided in sub. (1m), process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

#### **SECTION 6. Nonstatutory provisions.**

(1) **EMPLOYEE NOTIFICATION.** Within 90 days after the effective date of this subsection, each health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, and each health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, shall inform its employees of their rights and remedies under this act.

Most current copy 10/16/00 am

#### **SECTION 7. Initial applicability.**

(1) **COLLECTIVE BARGAINING AGREEMENTS.** This act first applies to an employee of a health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, or of a health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

#### **Reporting Complaints**

Members of the Examining Board are frequently asked how complaints are reported. This question may come from persons under investigation wondering how the Board received information, or it may come from someone who feels a veterinarian should be investigated. Basically, the Veterinary Examining Board receives complaints from 4 main sources – the public, federal/state/local authorities, veterinarians, and on occasion, forwarded complaints from the WVMA grievance committee or other licensing agency. In order for the board to evaluate a complaint, it must contain some specific information regarding the concern. Once the complaint is received, it enters the screening process which will be discussed in a future issue.

The most common source of complaints is from the general public. An individual may report a veterinarian because of a concern with service they received, or because of a concern with services received by a friend or relative. Occasionally, the complaint is filed by a former employee or friend of a former employee. All too often these complaints are regarding fees. As most of our licensees are aware, the board is not authorized to address fee disputes and these complaints generally do not progress beyond the screening stage.

Another source of complaints is law enforcement. Any time a license holder commits a crime, it is forwarded to the licensing agency. Examples would be: DWI, drug possession, substance abuse, any felony, etc. These complaints are addressed on a case by case basis.

Although veterinarians often try to resolve concerns in other ways, in some cases they report

other veterinarians directly to the board. when there is a specific concern to be addressed (i.e. surgical technique on a specific patient), the complaints may be opened and investigated. However, inflammatory statements about another veterinarian's type of practice are often too general to be pursued ("Dr. ABC is an incompetent surgeon and should have license revoked"). On top of this, veterinarians making these type of accusations frequently do so anonymously and leave us no one to contact to obtain further information.

The last source of complaints are those forwarded by the WVMA grievance committee or another agency (i.e. DEA). These are beyond the scope of the grievance committee or involve an agency in which the licensee has been disciplined or investigated at which point they alert the licensing board. Again, these are handled on a case by case basis.

Whatever the source of complaints, it is important to be aware of some basic facts regarding the handling of the complaint.

- 1) In order for a complaint to be investigated, there needs to be some specific concerns and references. The board has received some very vague and general complaints in the past such as "Veterinarian A is unprofessional." "Veterinarian B is incompetent." without names, dates and more specific information, these are next to impossible to proceed on.
- 2) The board will pursue anonymous complaints, however, if the initial complaint is unclear or we cannot locate the record (for example it is under a maiden name or spouse's name), we have no choice but to close it for a lack of evidence. If we have a complainant, we can contact them for more information. Some people who wish to remain anonymous have found it helpful to simply include a list of people that have information regarding the incident and include themselves somewhere on the list.
- 3) Any person that needs to report a concern may obtain a form from the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935, phone number (608) 266-7482.

- 4) If you have questions as to whether a veterinarian's conduct is below minimal standards or may be considered unprofessional, and your rules and regulations handbook does not clearly define it for you, contact the Department at (608) 266-2112.

### **Role of the Public Member**

#### **By Elaine McGregor**

Public members have served on boards attached to the Department of Regulation and Licensing since 1975. In 1983, the number of public members was increased to two on each board. The rationale supporting this change lies with the value of different insights and varied perspectives brought to the boards by public members.

As public members, we represent the consumer perspective and provide input to decisions from those affected. This balances interest of consumer with benefits of the profession. CONSUMER PROTECTION IS THE BASIS FOR ALL REGULATION and can easily take a back seat to professional promotion. We can keep government aware of consumer needs, monitor professional practices, improve consumer complaint procedures and achieve other positive results.

In addition to weighing proposals against the consumer's perspective it is important that we as public members consider what role the consumer representative has in insuring veterinarians are competent.

Since we must not be members of or connected to the regulated profession, their insights differ from professional members. We serve as checks and balances to enhance the board's ability to develop sound public policy.

As public members, we must be aware of the consumer advocacy role which we play.

### **The Importance of a Necropsy**

Regardless of our skill or ability, animals under our care in the practice of veterinary medicine sometimes die. Not infrequently, the death of these animals may be unexpected. Most of the time, the practitioner can easily ascertain the cause of death. Explaining this cause to the client may be another matter.

Those of us in the food animal medicine field often encounter deaths of animals like size,

condition and age, that are completely unrelated. If we are unable to thoroughly explain the individual cause of death, clients may be dissatisfied. Similarly, the unexplained death of any animal can create a poor relationship between the client and his veterinarian. The opportunity for the practitioner to receive assistance at our diagnostic laboratories is readily available. This may be done by complete necropsy at the lab, or individual tissue analyses.

In companion animal medicine, the unexplained death is often more difficult to resolve. When the death is sudden and unexpected, dealing with the emotional state of the owner may be especially difficult for the veterinarian. We as veterinarians may be very sure of the cause of death; however, if there is any indication that the owner is not completely satisfied, every effort should be made to have a necropsy performed by a disinterested party: another practitioner or a diagnostic laboratory.

In the deliberation that the board has to make, it is frequently only on contrasting testimony of expert witnesses as to the diagnosis, treatment or cause of death. In many of these cases, no action would need to have been taken if a complete necropsy had been performed. In fact, in most cases, the complaint would never have been filed if a necropsy had been done.

### **Disciplines**

**JENS OTTO LUEBOW DVM**

**MADISON WI                      SUSPENDED/COSTS**  
Failed to remove all ovarian tissue in an ovariohysterectomy of a cat and two dogs. Failed to properly suture the left ovarian pedicle in an ovariohysterectomy of a dog. His license is suspended for a period of not less than 20 days, or until he complies with a remedial education requirement. Must also complete a course in the performance of ovariohysterectomies on small animals. Costs of \$86,114.90. Effective 3/29/2000. Sec. 453.07, Stats. VE 7.06(1) Case #LS9703031VET

**STANLEY REED THIEMAN DVM**

**WEST ALLIS WI                      EDUCATION**  
Failed to make adequate inquiry into a cat's condition; failed to perform necessary testing; failed to reach an adequate diagnosis; failed to

consider or prescribe other medications and/or treatment; and inappropriately prescribed medication without confirming the diagnosis. Complete course by 2/24/2001. Effective 5/24/2000. VE 7.06(1),(2) Case #LS0005243VET

**WILLIAM JAMES SANFILIPPO DVM**

**TOMAHAWK WI                      EDUCATION**  
Failed to maintain adequate treatment records. Ordered to complete at least 8 hours of continuing education approved in advance by the board in the area of record keeping by 1/26/2001. Effective 7/26/2000. VE 7.03 Case #LS0007262VET

**WILLIAM R LOSCH DVM**

**CUDAHY WI                      LIMITED-EDUCATION**  
Failed to comply with a previous board order within the required time period. He had been ordered to complete coursework. Must now complete coursework by 11/24/2000. Effective 5/24/2000. Sec. 453.07(1)(h), Stats. Case #LS0005241VET

## Telephone Directory

**Automated Phone System for the Health Professions: (608) 266-2811**

Press 1 **Request Application**

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**Need a Duplicate License**

**Request a Letter of Good Standing**

Press 3 **Complaint Filing Information**

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Press 6 **Repeat Menu Choices**

**Fax (608) 261-7083**

## Verifications

All requests for verification of license status must be in writing. There is no charge for this service. Requests should be sent to the Department address or may be faxed to (608) 261-7083, Attention Verifications.

For our new "online Verification of Credential Holders" visit our Website at [www.drl.state.wi.us](http://www.drl.state.wi.us) and click on the "Credential Holder Query" button

## Endorsements

Requests for endorsements to other states must be in writing. The cost is \$10. Please make check or money order payable to the Department of Regulation and Licensing.

## 2000 Meeting Dates

November 27.

## Digests on Web Site:

November, 1997; June, 1998; December 1998; September, 1999; June, 2000

## Visit the Department's Web Site

<http://www.drl.state.wi.us/>

Send comments to [dorl@drl.state.wi.us](mailto:dorl@drl.state.wi.us)

## Wisconsin Statutes and Code

Copies of the Veterinary Statutes and Administrative Code can be ordered through the Board Office. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated April, 2000.

## Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

**WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.**

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